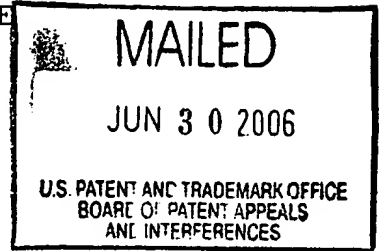


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte RAYMOND JEFFREY MAY, JAMES MARCUS CARR,
MICHEAL SCOTT BRUNNER, LAVADA CAMPBELL BOGGS,
HANNONG RHIM, JAMES RUSSELL FITTS, JR.,
KENNETH MICHAEL SALTER, VICTOR CHARLES LANG,
ADRIAN ROY EGGEN and OOMMAN PAINUMOOTIL THOMAS

Appeal No. 2006-1394
Application No. 09/855,188

ON BRIEF

Before WARREN, WALTZ and JEFFREY T. SMITH, ***Administrative Patent Judges.***

WALTZ, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on an appeal from the primary examiner's final rejection of claims 1 through 17, 19 through 21, and 50 through 59, which are the only claims pending in this application. We have jurisdiction pursuant to 35 U.S.C. § 134.

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Application No. 09/885,188

According to appellants, the invention is directed to a targeted elastic laminate material including a series of elastomeric filaments bonded between two facing layers, where the laminate material has at least one low tension zone and at least one high tension zone, each including a plurality of the elastomeric filaments running in the same longitudinal direction (Brief, page 2). Illustrative independent claim 1 is reproduced below:

1. A targeted elastic laminate material, comprising:
at least one low tension zone, the low tension zone including a plurality of elastomeric first filaments, the first filaments including a first elastomeric polymer;
at least one high tension zone, the high tension zone including a plurality of elastomeric second filaments, the second filaments including a second elastomeric polymer, wherein the first filaments and the second filaments run in the same longitudinal direction;
and
a first facing material bonded to at least a first side of the low tension zone and a first side of the high tension zone;
a second facing material bonded to at least a second side of the low tension zone and a second side of the high tension zone; and
a barrier layer positioned between at least a portion of each of the first and second facing materials.

The examiner has relied on the following references as evidence of obviousness:

Cederblad et al. (Cederblad)	5,885,686	Mar. 23, 1999
Mleziva et al. (Mleziva)	6,057,024	May 02, 2000

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Beitz et al. (Beitz)	6,248,097	Jun. 19, 2001
Melbye et al. (Melbye) (published International Application)	WO 95/34264	Dec. 21, 1995

Claims 1-7, 13-15, 20-21 and 50-59 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Melbye in view of Cederblad and Beitz (Answer, page 3). Claims 8-12, 16-17 and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Melbye in view of Cederblad, Beitz and Mleziva (Answer, page 5).

Based on the totality of the record, we affirm both grounds of rejection on appeal essentially for the reasons expressed in the Answer, as well as those reasons set forth below.

OPINION

The examiner finds that Melbye discloses an elastic material used in a disposable garment comprising a plurality of extruded continuous elastomeric strands which are bonded to a facing layer (Answer, page 3). The examiner finds that the strands of Melbye may be placed in greater quantity in certain regions and/or thicker and thinner strands may be used in order to produce an elastic material "having different zones of elasticity" which are equivalent to the claimed high and low tension zones (*id.*). The examiner further finds that Melbye does not expressly disclose that the different zones of elasticity include first filaments of a

first elastomeric polymer and second filaments of a second elastomeric polymer, nor does the reference disclose the claimed barrier layer (*id.*).

The examiner applies Cederblad for its disclosure of an extruded bicomponent elastomeric netting having bidirectional elasticity, where both sets of strands could be the same or different compositions, or a blend of resins (Answer, page 4). The examiner applies Beitz for the disclosure of a gusset-flap member which includes a barrier layer which is substantially liquid impermeable (Answer, pages 4-5).

Appellants argue that Cederblad discloses a netting with a set of extruded strands in one direction and another set of strands in a direction perpendicular to the first set, thus resulting in different tensions in the machine direction than the transverse direction but having uniform tension in each direction (Brief, page 4). Appellants further argue that there is no motivation to use the concept of strands with different compositions from Cederblad, or the barrier layer of Beitz, and insert these concepts into the elastomeric sheet of Melbye (Brief, pages 4-5; Reply Brief, page 2).

Appellants' arguments are not persuasive. In our analysis of the examiner's obviousness rejection, the claim must first be

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correctly construed to define the scope and meaning of each contested limitation. **See *Gechter v. Davidson***, 116 F.3d 1454, 1457, 1460 n.3, 43 USPQ2d 1030, 1032, 1035 n.3 (Fed. Cir. 1997). During examination proceedings, the verbiage of the claims is given the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, read in light of the specification. **See *In re Morris***, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). The Office should not import limitations from the specification into the claims, but should only limit the claim based on an express disclaimer of a broader definition. **See *In re Bigio***, 381 F.3d 1320, 1325, 72 USPQ2d 1209, 1210-11 (Fed. Cir. 2004).

Giving the claim language of claim 1 on appeal its broadest reasonable interpretation in its ordinary usage, we determine that the term "first elastomeric polymer" in ordinary usage is not distinguished in composition from the "second elastomeric polymer" but merely lists the order of the polymers, i.e., the scope of the claim includes the first and second elastomeric polymers being identical. We find no express disclaimer of this broad definition in appellants' specification, but merely a preference for differences in composition of the first and second elastomeric polymers (see page 3, ll. 10-20; page 12, ll. 15-17; and page 20,

11. 2-9).¹ Accordingly, in view of our claim construction, we determine that the different longitudinal tension zones created by different spacing and diameters of the same composition elastomeric strands of Melbye describe the claimed limitation of low and high tension zones (see Melbye, page 17, 11. 1-7, and Figure 8).

Appellants argue that Cederblad "teaches away" from combination of the netting bonded to any additional material, such as the claimed facing materials (Brief, page 6; Reply Brief, page 5). As discussed above, in view of our claim construction, Cederblad is not necessary to the rejection since Melbye discloses the claimed high and low tension zones. Furthermore, Cederblad discloses that the use of different materials to provide different elastic tensions was known in this art, thus establishing an equivalency between the spacing/different diameters of strands used by Melbye to create the same zones of high and low tension (Answer, page 7). The examiner does not rely on Cederblad for any disclosure or suggestion of bonding to additional materials (*id.*).

Appellants argue that there is no suggestion in Beitz to form the gusset-flap member as a sheet-like composite, and thus there is no suggestion to create a sheet-like composite with a barrier layer

¹We note that dependent claims 3 and 4 have not been separately argued.

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(Brief, page 6; Reply Brief, page 3). This argument is not persuasive for the reasons set forth by the examiner (Answer, page 7), namely that Beitz discloses a composite structure similar to that of Melbye, i.e., a laminate used in disposable garments, with the teaching of using a barrier layer to improve the property of being liquid impermeable. Therefore we find that the examiner has provided sufficient motivation for the proposed combination of references.

For the foregoing reasons and those stated in the Answer, we determine that the examiner has established a prima facie case of obviousness in view of the reference evidence. Based on the totality of the record, including due consideration of appellants' arguments, we determine that the preponderance of evidence weighs most heavily in favor of obviousness within the meaning of § 103(a). Therefore we affirm both of the rejections on appeal.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (2004).

AFFIRMED


CHARLES E. MADDEN

CHARLES F. WARREN
Administrative Patent Judge

THOMAS A. WALTZ

THOMAS A. WALTZ
Administrative Patent Judge

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